

I have talked a lot about principle. We should also make this a little more tangible. So let's take a look at what would happen if in fact the legislative filibuster were gone. If the Democratic majority were to attack the filibuster, they would guarantee themselves immediate chaos, especially in this 50-50 Senate. This body operates every day and every hour by consent, and destroying the filibuster would drain comity and consent from this body to a degree that would be unparalleled in living memory.

So let's look at some examples.

The Constitution requires the Senate to have a quorum to do any business. Right now, a quorum is 51, and the Vice President does not count to establish a quorum. The majority cannot even produce a quorum on their own, and one could be demanded by any Senator at almost any time.

Our committees need quorums to function as well. They will also be evenly split. If this majority went scorched-earth, this body would grind to a halt like we have never seen. Technically, it takes collegiality and consent for the majority to keep acting as the majority at any time they do not physically—physically—have the majority.

In a scorched-earth, post-nuclear Senate that is 50-50 like we have today, every Senate Democrat and the Vice President could essentially just block out the next 2 years on their calendar. They would have to be here all the time.

It takes unanimous consent to schedule most votes, to schedule speeches, to convene before noon, to schedule many hearings and markups. As Democrats just spent 4 years reminding us, it takes consent to confirm even the lowest level nominees at anything beyond a snail's pace.

None of us has ever seen a Senate where every single thing either happens in the hardest possible way or not at all. Heck, once or twice every day the majority leader reads through an entire paragraph of routine requests. Objections could turn each one into multiple, lengthy rollcall votes.

None of us on either side wants to live in a scorched-earth Senate. The institution and the American people deserve a lot better. But there is no doubt—none—that is what we would see if Democrats tear up this pivotal rule. It would become immediately and painfully clear to the Democratic majority that they had indeed just broken the Senate.

This gambit would not speed the Democrats' ambitions. It would delay them terribly, and it would hamstring the Biden Presidency over a power grab which the President has spent decades warning against and still opposes.

Finally, at some point, the shoe would find its way to the other foot. When Republicans next control the government, we would be able to repeal every bill that had just been rammed through, and we would set about de-

fending the unborn, exploring domestic energy, unleashing free enterprise, defunding sanctuary cities, securing the border, protecting workers' paychecks from union bosses—you get the picture.

But a few years later, the Democrats would try to flip it all back. So instead of building stable consensus, we would be chaotically swapping party platforms, swinging wildly between opposite visions that would guarantee half the country is miserable and resentful at any given time. We would have inherited resilient institutions but left behind a chaotic mess.

We are in a politically charged period, but when factional fever runs hot, when slender majorities are most tempted to ram through radicalism, these are the times for which the guardrails exist in the first place.

Republicans said no—emphatically no—to pushing the Senate over this precipice. When I could have tried to grab the power, I turned it down. I said: "President Trump, no," repeatedly, because the Nation needs us to respect the Framers' design and the Senate's structure, and because, as I said in a different context on January 6, we have a higher calling than endless partisan escalation.

We have placed our trust in the institution itself, in a common desire to do the right thing. I am grateful that has been reciprocated by at least a pair of our colleagues across the aisle. I am glad that we have stepped back from this cliff. Taking that plunge would not be some progressive dream; it would be a nightmare. I guarantee it.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

#### EXECUTIVE SESSION

##### EXECUTIVE CALENDAR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of Antony John Blinken, of New York, to be Secretary of State.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 12 noon will be equally divided between the two leaders or their designees.

The ACTING PRESIDENT pro tempore. Senator from Illinois.

##### FILIBUSTER

Mr. DURBIN. Mr. President, it has been my good fortune to serve in the

Senate for 24 years. I have great respect for this institution and continue to believe that the men and women who serve here are extraordinary examples, by and large, of public service and that we have done great things of a historic nature.

I think of the days of the Obama Presidency, when we had to rescue our economy, make reforms on Wall Street that made a difference, and build a public health system that we have aspired to for decades. We achieved those goals—not easily—with hard work and determination. I am glad to have been a part of it.

When I hear the Republican leader come to the floor and talk about his memory of the Senate, I hasten to add: There is another side to the story. I will come to the floor in a few days to outline the history of the filibuster, but I am sure the Senator from Kentucky, who has been in the Senate—and his staff—in elected capacity for decades, would concede this point: Up until the 1960s, the filibuster was rarely used in this U.S. Senate. The demand for, once, 67 votes, then 60 votes was rare.

Oh, it was remembered that, in the 1960s, civil rights legislation foundered on the floor of this U.S. Senate because of the filibuster, but it was rarely applied. That changed. It changed under the Senator from Kentucky's leadership. It became so commonplace—the filibuster was being used so frequently—that it led to Senator Reid, then the Democratic leader, making some fundamental changes in the Senate rules.

I remember that day very well, and I remember the anguish that Senator Reid felt at the time. But he felt he had no recourse because the filibuster had become commonplace, the 60-vote requirement commonplace.

I don't know exactly what the argument is from the other side at the moment, but I think any fairminded Senator would concede the Senate is capable of doing great things; it is capable of being deliberative; yet it still can be decisive.

There comes a time when we should act. And to merely let every issue get mired down into a 60-vote requirement and filibuster and nothing come out of this Chamber as a result cannot be what our Founding Fathers envisioned for the world of the U.S. Senate.

I want to address that issue at another time in more detail, with facts and figures on the use and misuse of filibuster, but at this moment I would like to raise another question, which is related.

##### NOMINATION OF ALEJANDRO NICHOLAS MAYORKAS

Mr. President, we are in the midst of a global pandemic. More than 420,000 American lives have been lost. Just 3 short weeks ago, 20 days ago, this Capitol, this age-old symbol of America, was attacked by homegrown domestic terrorists. It was overrun for the first time since the British invasion in the War of 1812.

After this horrific attack on this Capitol by this mob—insurrectionist mob—I hope the United States can finally come to grips with the reality of terrorism today.

I remember 9/11 very well. Who could forget it if you lived through it? I was in this building and fully expected an attack on this structure. We ran out, down the steps onto the grassy lawn, and stood, wondering what to do next. This was going to be the next target. Thank goodness for the heroism of those who came forward and took control of the plane—at least diverted it into Pennsylvania.

Some would dismiss the insurrectionist mob as just another rowdy political crowd not unlike many other political demonstrations. In fact, I have heard comparisons of Black Lives Matter rallies to the terrorist attack of January 6.

But there was a fundamental difference 20 days ago. That fundamental difference is the fact that five Americans died as a result of that mob invading the Capitol, including one Capitol policeman. We have heard rumors of the details of how he died. I am sure we are going to hear more as the investigation continues. But this was just not another political demonstration. It was an example of terrorism, period—American-grown, American-sponsored.

The security of our Nation is still at stake. There was a demonstration yesterday in downtown Chicago by White supremacists. Over 80 of them gathered—over 80 of them—in downtown Chicago to stand up and defiantly show that they were still alive and well and ready to act.

The very least we can do is to ensure that the Agency responsible for our protection against this sort of terrorism has leadership. That Agency is the Department of Homeland Security.

President Biden has suggested a man to lead that Department: Ali Mayorkas. He is an extraordinary public servant. The Senate has confirmed him three times. He previously served for 7 years at this Agency. He has been nominated now to lead it.

Most recently, he served as the Department of Homeland Security Deputy Secretary, the agent second in command and chief operating officer. He was in charge of counterterrorism, cyber security, border security, emergency management, and other critical matters. He did the job and did it well.

We need him again. We need his expertise and experience at the Department of Homeland Security today—today.

Perhaps the Republicans have forgotten about the last 4 years of failed policy and chaos at the Department of Homeland Security. Just a little reminder: It was under President Trump that the Agency experienced an unprecedented leadership vacuum.

Consider this: The Department of Homeland Security lurched from one Secretary or Acting Secretary to the next. Six—six people headed that Agen-

cy during the Trump administration. Only two of them were confirmed by the U.S. Senate. That is more Agency heads in the last 4 years than in the 13-year history of the Department of Homeland Security before the Trump administration.

They couldn't keep a leader in place. The President was firing them, and they were resigning right and left. For over a year, that Agency, the Department of Homeland Security, was led by an unlawfully appointed Acting Secretary, Chad Wolf. Then, just 9 days before Donald Trump left the White House, Mr. Wolf resigned, replaced by yet another Acting Secretary.

An Agency with the critical task of keeping America safe, keeping our families safe, couldn't even agree on who would head the Agency.

Four former Secretaries of Homeland Security—two Republicans and two Democrats—every person who served as a Senate-confirmed DHS Secretary prior to the Trump administration, say that Ali Mayorkas is the man for the job. They said he is “a man of character, integrity, experience, and compassion,” and “a proven leader to right the ship.”

In their endorsement of Mr. Mayorkas, they went on to say: The leadership vacuum and turmoil at the Department of Homeland Security may have contributed to the failure to anticipate and adequately prepare for the attack on the Capitol.

That is the reality. After 4 years of disorder and disarray at the Department of Homeland Security, the security of America, including the security of this very building, suffered because of lack of leadership under the Trump administration.

Over the last 4 years, we have watched the politicization of the Department of Justice and the Department of Homeland Security. We have seen some horrible things occur: Operation Zero Tolerance—2,700 infants, babies, and children separated from their parents at the border of the United States, cast into a bureaucratic system and forgotten until a Federal judge in Southern California said: Enough. I want to know who those kids are, and I want to know why they haven't been reunited with their parents. That was months after they had been separated.

I went to an immigration court in Chicago, downtown in the Loop, in a big high-rise office building. I didn't expect to find a court, but I did. I got off the elevator, and the walls were lined with people. The hallways were packed with those waiting for a hearing before this immigration court.

I met the judge. She had been on the bench there in the immigration court for almost 20 years. She was a good person. You could tell. She said: Senator, I wish you would stay for the docket call this morning in this immigration court.

This was in the middle of this zero-tolerance separation from their parents.

I want you to see the first two clients who are going to come before us.

I waited. They called the docket, and they said that everyone in the courtroom should be seated. There was difficulty seating one of the persons on the docket. Marta was her name. She was 2 years old. She had to be lifted into a chair and handed a stuffed animal. Luckily, the little boy, who, coincidentally, had the name Hamilton, was enticed to climb up on the chair when they put a Matchbox car on the table—two of the children separated by the zero-tolerance policy of the Department of Homeland Security under President Trump.

There was, of course, a decision to postpone any hearing on their case for 6 months. They were put back into the system. I don't know what ultimately happened in the meantime. But I can tell you this: It was months before Marta was returned to her parent. Some of these separated children would not even let their own mothers hold them after they were reunited. They felt that they had been abandoned.

But they had not been abandoned by their mothers. They had been abandoned by anyone with a conscience at the Department of Homeland Security. That is what happened, and that is what happened under that Agency in a Trump administration.

Is it any wonder that we need new leadership, that we need an accounting of these children? There are still reports, heartbreaking reports that more than 600 children are still adrift in the system, never reunited with their families. I will tell you, if it is within my power, the Senate Judiciary Committee will certainly investigate that.

The failure of the Department of Homeland Security in that instance is going to be one of the most shameful chapters in the modern history of the United States. The failure of our Nation's national security leaders to address the threat of violent White supremacists and other far-right extremism really gives evidence as to why we need to fill this spot immediately.

What is the problem? President Biden has nominated Ali Mayorkas. Ali Mayorkas has turned in his paperwork required by law, has submitted his name for a hearing, and appeared before a committee of Congress. Why isn't he being approved here?

One Senator, a Senator from Missouri, has a hold on his nomination. Why? Well, he may disagree with him on some policies, he said publicly. I am sure he does. I am sure he disagrees on many policies. Is that enough? Is that enough to say that this critical Agency will not have a leader because the Senator of Missouri disagrees with him on a policy?

Occasionally, I tune in to FOX to see what folks are saying there. The other night, last week, when I tuned in, there was this breathless reporting of a Brown-skinned invasion at our border—thousands in caravans destined for the United States. Over and over

again we have heard that story. What Agency is responsible for making sure that their arrival on our border is orderly, that they do not cross the border improperly? It is the Department of Homeland Security—the same Agency that is being denied leadership by one Senator on the other side of the aisle. It is time to get over it. It is time to give President Biden the leadership we need at that Agency as quickly as possible.

We, in contrast, know that America is a unique nation, and what makes it special is that people from all over the world can come to our shores and become Americans, not because of their race or ethnicity but because they embrace America's democratic ideals.

The son of a Holocaust survivor and an immigrant from Cuba, Mr. Mayorkas knows firsthand that America can be a beacon of hope and promise to those facing persecution. Mr. Mayorkas is an experienced national security leader who can restore integrity and decency at the Department of Homeland Security.

I personally appreciated the skill and dedication he showed as Director of the United States Citizenship and Immigration Services. There, in the year 2012, he implemented DACA—the Deferred Action for Childhood Arrivals—that allowed for more than 800,000 young people to have a chance to be part of America. As Deputy Secretary, Mr. Mayorkas oversaw a \$60 billion budget and led a workforce of 230,000 individuals. He is the right man for the job, and he should be on the job today.

He excelled in that role, receiving the Department's Distinguished Service Award—the highest civilian honor—the U.S. Coast Guard's Distinguished Service Award, and a special commendation from the National Security Agency for his achievements in national security and cyber security.

Among his numerous responsibilities, he led the Department's response to the Zika and Ebola outbreaks—highly relevant and timely expertise we could use now in this COVID-19 pandemic.

He served as a Senate-confirmed U.S. attorney to California earlier in his career.

The national president of the Fraternal Order of Police has enthusiastically endorsed Mr. Mayorkas and said, "His professionalism, integrity and commitment to just and fair enforcement of the law makes him an ideal candidate to lead the department. Mr. Mayorkas has pursued criminal wrongdoers and has protected the rights of the innocent with indefatigable vigor. His work reflects all that is right in the government."

That was the statement from the Fraternal Order of Police about this nominee. He is an outstanding nominee to be Secretary of Homeland Security. His experience, qualifications, expertise, and integrity will serve America well at a time we desperately need him.

I ask the Senator who is holding his nomination to release the hold today.

Let Mr. Mayorkas go to the head of this Agency where he is desperately needed and show the kind of leadership he has over and over again for this country.

I urge my colleagues to expeditiously confirm Mr. Mayorkas so that he can serve as the next Secretary of Homeland Security.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Republican whip is recognized.

#### FILIBUSTER

Mr. THUNE. Mr. President, there has been a lot of talk about the legislative filibuster here in the Senate over the last few days. As we started the new Congress evenly divided between Republicans and Democrats, the Republican leader had proposed that the Democrat leader include a commitment to preserving the legislative filibuster and the power-sharing agreement the leaders have been working out. This should have been easy.

Less than 4 years ago, with a Republican President in the White House and Republicans in control of the Senate and the House of Representatives, a bipartisan group of 61 Senators affirmed their support for retaining the legislative filibuster, stating: "We are united in our determination to preserve the ability of Members to engage in extended debate when bills are on the Senate floor."

There are 26—26—current Democratic Senators—a majority of the current Democratic caucus—who signed that defense of the legislative filibuster when they were in the Senate minority. It is disappointing that the Democrat leader failed to express his support for this essential Senate rule.

Nevertheless, thanks to the recent commitment from two Senate Democrats to oppose any attempt to eliminate the filibuster—a commitment which secures this key protection for minority rights—Leader MCCONNELL is now moving forward without a statement from the Democrat leader.

But it is worth taking a moment to reiterate why the legislative filibuster is so important. The legislative filibuster, of course, is essentially the requirement that 60 Senators agree before the Senate can end debate and vote on a bill. In other words, you need 60 percent of the Senate to agree before you can pass a bill. This usually means that you need the support of at least some Members of the other party before you can move legislation.

The party in power doesn't always enjoy that rule. All of us would like the opportunity to pass exactly the legislation that we want. But most of us recognize that it is a good requirement.

The legislative filibuster ensures that the minority is represented in the legislation. This would be important even if elections tended to break 60 to 40 or 70 to 30 in favor of one party or another. All Americans, whether or not they are in the majority, deserve to be

represented. But it is particularly important when you consider that our country is pretty evenly split down the middle.

While the advantage sometimes goes to Democrats and sometimes to Republicans, the truth is that our country is pretty evenly split, which means any attempt to disenfranchise the minority party means disenfranchising half of the country.

Of course, the party in power generally gets to accomplish more than the minority party—and that is appropriate. The country may be fairly evenly divided, but sometimes it wants to move more toward one side or the other.

What is not appropriate is to eliminate meaningful minority representation, which would be the consequence of eliminating the legislative filibuster. Our Founders recognized the importance of putting safeguards in place to ensure that majorities wouldn't curtail or eliminate minority rights.

That is why the Founders created the Senate. They made the Senate smaller and Senators' terms in office longer, with the intention of creating a more stable, more thoughtful, and more deliberative legislative body to check ill-considered or intemperate legislation or attempts to curtail minority rights.

And as time has gone on, the legislative filibuster is the Senate rule that has had perhaps the greatest impact in preserving the Founders' vision of the Senate. Thanks to the filibuster, it is often harder to get legislation through the Senate than the House. It requires more thought, more debate, and greater consensus—in other words, exactly—exactly—what the Founders were looking for.

I am grateful to my Democrat colleagues who have spoken up about their commitment to preserving the legislative filibuster. Republicans were committed to protecting the vital safeguard of minority rights when we were in the majority—despite, I might add, the then-President's calls repeatedly to eliminate it—and I appreciate that a number of my Democrat colleagues share that commitment.

I am particularly grateful to the Senator from West Virginia and the Senator from Arizona for their uncompromising defense of minority rights and the institution of the Senate here in recent days.

Again, however, I am disappointed the Democrat leader chose not to express his support for this essential Senate rule. I would point out that when Democrats were in the minority in the Senate, they made frequent use of the legislative filibuster.

I hope that the commitment to the legislative filibuster expressed by President Biden and a number of Senate Democrats means the end of any talk of eliminating the filibuster. No matter how appealing it might be in the moment, destroying this longstanding protection for minority rights